

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Questar Overthrust Pipeline Company

Docket No. CP06-167-000

ORDER ISSUING CERTIFICATE

(Issued September 8, 2006)

1. On May 1, 2006, Questar Overthrust Pipeline Company (Overthrust) filed an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity to construct and operate approximately 27.1 miles of 36-inch diameter pipeline and related facilities in Uinta and Lincoln Counties, Wyoming, with capacity of 550,000 Dth per day of natural gas.
2. For the reasons set forth below, we find that the proposed facilities are required by the public convenience and necessity, and we will issue the requested certificate, subject to certain conditions.

Background and Proposal

3. Overthrust's current pipeline system extends approximately 88 miles from the Whitney Canyon production area in Uinta County, Wyoming to an interconnect with Wyoming Interstate Company Ltd. (Wyoming Interstate) at the Kanda-Nightingale-Coleman Compressor Complex, in Kanda, Wyoming (Kanda). Overthrust seeks approval here to construct a 27.1-mile long, 36-inch diameter pipeline with a capacity of 550,000 Dth per day from its Wyoming Interstate interconnect at Kanda to a new interconnection with the Kern River Gas Transmission Company (Kern River) at Opal.
4. The proposed pipeline will largely follow existing pipeline corridors already occupied by Questar Pipeline Company, Colorado Interstate Gas Company, Northwest Pipeline Corporation, and Kern River Gas Transmission Company. Approximately 14.5 miles of the proposed route will cross private land belonging to four landowners, approximately 12.15 miles will cross land administered by the U.S. Bureau of Land Management, and .45 miles will cross Wyoming state lands. Construction of the pipeline facilities will require 168.0 acres of permanent new right of way.

5. The purpose of this project, Overthrust states, is to extend its existing pipeline infrastructure to transport Rocky Mountain gas supplies to downstream markets. Overthrust states that producers in the Rocky Mountain region are currently drilling and developing extensive gas supplies in this area, but only limited pipeline capacity is available. After two open seasons in late summer and fall 2005, Overthrust entered into a binding precedent agreement with Wyoming Interstate to transport natural gas on a firm basis from Kanda to Opal for an 11-year term. The agreement provides for firm service transportation volumes of 300,000 Dth per day for the period January 1, 2007 through December 31, 2007; 250,000 Dth per day for the period January 1, 2008 through December 31, 2008; 150,000 Dth per day for the period January 1, 2009 through March 31, 2011; and 175,000 Dth per day for the period April 1, 2011 through December 31, 2017.

6. Overthrust estimates the cost of the project at \$51,500,200. Overthrust acknowledges that the discounted rate Wyoming Interstate has agreed to pay for this service will not recover the total annual cost of the expansion project.

Interventions

7. Notice of the Overthrust application was published in the *Federal Register* on May 18, 2006 (71 *Fed. Reg.* 28859). Timely, unopposed motions to intervene in this proceeding were filed by Western Gas Resources, Inc. and Ultra Petroleum Corporation. These motions are granted by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹ No protests to the application were filed.

Discussion

8. Because this proposal involves facilities for the transportation of gas in interstate commerce subject to the jurisdiction of the Commission, it is subject to the requirements of section 7 of the NGA.

Public Convenience and Necessity

9. On September 15, 1999, the Commission issued a Certificate Policy Statement to provide guidance as to how we will evaluate proposals for certificating new construction.² The Certificate Policy Statement established criteria for determining

¹ 18 C.F.R. § 385.214 (2006).

² *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000).

whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explained that in deciding whether to authorize the construction of major new pipeline facilities, we balance the public benefits against the potential adverse consequences. Our goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

10. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, we will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will we proceed to complete the environmental analysis where other interests are considered.

11. Overthrust's proposal meets the threshold test that its existing customers not subsidize the project. Overthrust is proposing to offer service over this expansion under its existing FT rate schedule (although under its precedent agreement, Wyoming Interstate will receive service at a discounted rate). However, Overthrust is not seeking, nor will we grant, a predetermination that the costs associated with these facilities can be rolled into Overthrust's system-wide rates in a future section 4 rate case. Therefore, existing customers will not be subsidizing the proposed expansion.. The proposed project will not result in any degradation of service to Overthrust's existing customers. Nor should the project have any adverse effect on existing pipelines or existing pipeline's captive customers. The Commission received no objections or comments from any of these groups. Likewise, no landowners have objected to the proposal.

12. We find that the proposed pipeline project will benefit the public by providing a new option for increasing supplies of Rocky Mountain gas to reach markets without subsidies and without adverse impacts on existing pipelines or customers. We find that the benefits from Overthrust's proposal will outweigh any potential adverse effects, and that the proposed pipeline laterals are required by the public convenience and necessity.

13. As is our standard practice where an applicant has relied in its application on precedent agreements to demonstrate market demand for its proposed project, we will condition our certificate authorization so that construction cannot commence until after Overthrust executes a contract or contracts that reflect the levels and terms of service represented in its precedent agreement with Wyoming Interstate.³

Rate Treatment of Project of Costs

14. Overthrust's work papers show an \$8,323,545 first year cost of service for the project.⁴ In deriving this cost of service, Overthrust used the 53.6 percent debt/46.4 percent equity capital structure, 3.7 percent depreciation rate, 7.15 percent interest rate for debt and 11.75 percent return on equity used to determine its currently effective system-wide rates.

15. Wyoming Interstate will receive service under Overthrust's Rate Schedule FT and has agreed to pay a discounted reservation charge of \$1.52083 Dth per month and a system-wide usage charge.⁵ However, Overthrust's proposed facilities will have capacity of 550,000 Dth per day, and the 11-year binding precedent agreement with Wyoming Interstate is for a maximum of firm transportation service of 300,000 Dth per day in the first year and lower firm volumes in the following years, as described above. While Overthrust states that it will continue to market the proposed facilities' unsubscribed capacity, Overthrust acknowledges that the proposed discounted rate to be paid by Wyoming Interstate for its reserved capacity will not recover the total annual cost of the project in any year.

³ See, e.g., *Tennessee Gas Pipeline Company*, 101 FERC ¶ 61,360, P 21 (2002).

⁴ Overthrust's proposes a \$8,323,545 cost of service in year one which includes a \$59,620 operation and maintenance expense; a \$1,905,507 depreciation expense (at a 3.7 percent depreciation rate); a \$4,682,149 return allowance; \$1,480,478 in federal income taxes (calculated at a federal tax rate of 35 percent); and \$195,791 in taxes other than income taxes.

⁵ Overthrust's currently effective system-wide rates became effective on April 1, 2001, pursuant to the Commission's acceptance of a settlement agreement in Docket No. RP00-2-000. See 92 FERC ¶ 61,027 (2001). The settlement rates reduced Overthrust's rates by 10 percent, resulting in a Rate Schedule FT reservation charge of \$2.1640 per Dth and a Rate Schedule IT interruptible service rate of \$0.0712 per Dth.

16. As discussed above, under the Commission's Certificate Policy Statement, a threshold requirement for an existing pipeline to establish public convenience and necessity is that the pipeline must be prepared to financially support the project and be at risk for unsubscribed capacity. While the Certificate Policy Statement provided that the pipeline can share such risks with new expansion customers in pre-construction contracts, the pipeline cannot shift those risks to existing customers. The revenue to be generated from the discounted rate agreement with Wyoming Interstate does not recover the full costs of this project. Moreover, while Overthrust is confident that it will be able to market the remaining capacity given the gas supply development activity in the region, there is no certainty that will occur. Accordingly, we find that should Overthrust propose to roll the costs associated with these facilities into its system-wide rates in a future section 4 rate proceeding it will have the burden of proving that such rolled-in rate treatment will not result in a subsidy by existing customers. In addition, we will require Overthrust to keep its books and other records in a manner that will show the costs of service and revenue associated with this project separately, so that the summary required by section 154.309 of our regulations can be filed in any future Overthrust rate proceeding.

Environment

17. On December 30, 2005, we issued a *Notice of Intent to Prepare an Environmental Assessment for the Proposed Overthrust Expansion Project and Request for Comments on Environmental Issues* (NOI). We did not receive any responses to the NOI.

18. Our staff prepared an environmental assessment (EA) for Overthrust's proposal. The EA addresses geology, soils, water resources, wetlands, fisheries, vegetation, wildlife, land use, visual resources, threatened and endangered species, cultural resources, air and noise quality, safety, and reliability. Based on the discussion in the EA, we conclude that if constructed and operated in accordance with Overthrust's application and supplements filed June 2 and June 7, 2006 and the conditions in the appendix to this order, approval of this proposal would not constitute a major federal action significantly affecting the quality of the human environment.

19. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or

local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁶

20. Overthrust shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other Federal, state, or local agencies on the same day that such agency notifies Overthrust. Overthrust shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Overthrust pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations to construct, own, operate, and maintain natural gas facilities as described and conditioned herein, and as more fully described in the application.

(B) The certificate authority in Ordering paragraph (A) shall be conditioned on the following:

- (1) Overthrust's completing the authorized construction of the proposed facilities and making them available for service within one year of the issuance of this order pursuant to paragraph (b) of section 157.20 of the Commission's regulations;
- (2) Overthrust's compliance with all applicable Commission regulations, including paragraphs (a), (c), (e), and (f) of section 157.20;
- (3) Overthrust's compliance with the environmental conditions listed in the appendix to this order; and
- (4) Overthrust's executing, prior to the commencement of construction, service agreements for firm service equal to the levels of service represented in its precedent agreement with Wyoming Interstate.

⁶See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Commission*, 894 F.2d 571 (2d Cir. 1990); and *Iroquois Gas Transmission System, L.P., et al.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(5) Overthrust must maintain its books and other records in a manner that will show the cost of service and revenues associated with this project separately.

(C) Overthrust shall notify the Commission's environmental staff by telephone and/or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies Overthrust. Overthrust shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX – ENVIRONMENTAL CONDITIONS

As recommended in the EA, this authorization contains the following conditions:

1. Questar Overthrust Pipeline Company (Overthrust) shall follow the construction procedures and mitigation measures described in its application, supplements (including responses to staff data requests), and as identified in the environmental assessment (EA), unless modified by the Order. Overthrust must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) before using that modification.
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the project. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop work authority) to assure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from the project construction and operation.
3. **Prior to any construction**, Overthrust shall file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EI), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs before becoming involved with construction and restoration activities.
4. The authorized facility location shall be as shown in the EA, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, Overthrust shall file with the Secretary any revised detailed survey alignment maps/sheets at a scale not smaller than 1:6,000 with station positions for the facility approved by the Order. All requests for modifications of

environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Overthrust's exercise of eminent domain authority granted under Natural Gas Act (NGA) section 7(h) in any condemnation proceedings related to the Order must be consistent with the authorized facility and location. Overthrust's right of eminent domain granted under NGA section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way (ROW) for a pipeline to transport a commodity other than natural gas.

5. Overthrust shall file with the Secretary detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, pipe storage yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas must be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of the OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by Overthrust's project-specific Upland Erosion Control, Revegetation, and Maintenance Plan or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resource mitigation measures;
 - b. implementation of endangered, threatened, or special concern species mitigation measures;
 - c. recommendations by state regulatory authorities; and
 - d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.
6. **At least 60 days before initial construction begins,** Overthrust shall file an initial Implementation Plan with the Secretary for review and written approval by the Director of OEP describing how Overthrust will implement the mitigation

measures required by the Order. Overthrust must file revisions to the plan as schedules change. The plan shall identify:

- a. how Overthrust will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
- b. the number of EIs assigned per spread, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
- c. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
- d. the training and instructions Overthrust will give to all personnel involved with construction and restoration (initial and refresher training as the project progresses and personnel change), with the opportunity for OEP staff to participate in the training session(s);
- e. the company personnel (if known) and specific portion of Overthrust's organization having responsibility for compliance;
- f. the procedures (including use of contract penalties) Overthrust will follow if noncompliance occurs; and
- g. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - i. the completion of all required surveys and reports;
 - ii. the mitigation training of onsite personnel;
 - iii. the start of construction; and
 - iv. the start and completion of restoration.

7. Overthrust shall employ at least one EI. The EI shall be:

- a. responsible for monitoring and ensuring compliance with all mitigation measures required by the Order and other grants, permits, certificates, or other authorizing documents;
- b. responsible for evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract (see condition 6 above) and any other authorizing document;
- c. empowered to order correction of acts that violate the environmental conditions of the Order, and any other authorizing document;
- d. a full-time position separate from all other activity inspectors;

- e. responsible for documenting compliance with the environmental conditions of the Order, as well as any environmental conditions/permit requirements imposed by other federal, state, or local agencies; and
 - f. responsible for maintaining status reports.
8. Overthrust shall file updated status reports prepared by the head EI with the Secretary on a **weekly** basis **until all construction and restoration activities are complete**. On request, these status reports will also be provided to other federal and state agencies with permitting responsibilities. Status reports shall include:
- a. the current construction status of the spread, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - b. a listing of all problems encountered and each instance of noncompliance observed by the EI during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - c. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - d. the effectiveness of all corrective actions implemented;
 - e. a description of any landowner/resident complaints which may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - f. copies of any correspondence received by Overthrust from other federal, state or local permitting agencies concerning instances of noncompliance, and Overthrust's response.
9. Overthrust must receive written authorization from the Director of OEP **before commencing service** from the project. Such authorization will only be granted following a determination that rehabilitation and restoration of the right-of-way and other areas affected by the project are proceeding satisfactorily.
10. **Within 30 days of placing the certificated facility in service**, Overthrust shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facility has been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or

- b. identifying which of the Certificate conditions Overthrust has complied with or will comply with. This statement shall also identify any areas affected by the project where compliance measures were not properly implemented, if not previously identified in filed status reports, and the reason for noncompliance.
- 11. Overthrust shall defer construction and use of facility, and use of staging, storage, temporary work areas, and new or to-be-improved access roads **until**:
 - a. Overthrust files the Bureau of Land Management (BLM) and State Historic Preservation Office's (SHPO) comments on the inventory and Supplemental reports;
 - b. Overthrust files any required cultural resources survey report(s) for the pipe storage and contractor staging yards, and any other newly identified areas requiring survey, and the BLM and SHPO accept the report(s); and
 - c. the Director of OEP reviews and approves all reports and notifies Overthrust in writing that it may proceed.

All material filed with the Commission containing **location, character, and ownership** information about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION – DO NOT RELEASE."**

- 12. During construction, where Overthrust does not utilize the full ROW topsoil segregation method, the construction ROW width shall not exceed 100 feet without written site-specific approval by the Director of OEP.